

CIVIL DISTRICT COURT  
PARISH OF ORLEANS  
STATE OF LOUISIANA

GLORIA SCOTT AND \*  
DEANIA JACKSON \*  
\* NO. 96-8461  
VERSUS \* DIVISION "I"  
\* SECTION 14  
THE AMERICAN TOBACCO \*  
COMPANY, INC., ET AL. \*  
\*  
\* \* \* \* \*

Transcript of proceedings before The  
Honorable Richard J. Ganucheau, Judge Pro Tempore,  
Civil District Court, Parish of Orleans, State of  
Louisiana, 421 Loyola Avenue, New Orleans, Louisiana  
70112, commencing on June 18, 2001.

\* \* \* \* \*  
Tuesday Afternoon Session  
April 22, 2003  
1:38 p.m.  
\* \* \* \* \*

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6 \* \* \* \* \*

7  
8 I N D E X

9  
10 WITNESS: PAGE  
11 W. KIP VISCUSI, Ph.D.  
12  
CROSS-EXAMINATION  
13 BY MR. RUSS HERMAN.....18713  
14 REDIRECT EXAMINATION  
BY MR. MUEHLBERGER.....18732

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1 P R O C E E D I N G S  
2 THE BAILIFF:  
3 All rise for the jury, please.  
4 (Whereupon the jury joins the  
5 proceedings at this time.)  
6 THE LAW CLERK:  
7 All rise. Recess is over. Court will  
8 come to order.  
9 THE COURT:  
10 Please be seated.  
11 Are you ready to continue, Mr. Herman?  
12 MR. RUSS HERMAN:  
13 Yes, Your Honor.  
14 Good afternoon, Judge Ganucheau.  
15 Good afternoon, ladies, gentlemen of the  
16 jury.  
17 THE JURY:  
18 Good afternoon.  
19 MR. RUSS HERMAN:  
20 Good afternoon, Professor Viscusi.  
21 THE WITNESS:  
22 Good afternoon.

23 CROSS-EXAMINATION  
24 BY MR. RUSS HERMAN:  
25 Q. When you were here last on April 10th, 2003,  
26 oh, I guess -- today's the 22nd -- about 12 days  
27 ago, in response to one of my questions, you had  
28 indicated that you had never seen your methodology  
29 criticized by anybody.  
30 Do you remember that testimony?  
31 A. I do remember the testimony.  
32 Q. You have been criticized by two  
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1 epidemiologists of the American Cancer Society in  
2 1995; isn't that true?  
3 A. Who are they?  
4 Q. Dr. Heath and Dr. Thun, T-H-U-N.  
5 A. I've never seen their criticism.  
6 Q. You've never seen it, sir?  
7 A. To the best of my knowledge.  
8 Q. Well, I'll show it to you. I don't want  
9 to --  
10 MR. MUEHLBERGER:  
11 Exhibit number, please?  
12 MR. RUSS HERMAN:  
13 Yes. It's 0321.04.  
14 MR. MUEHLBERGER:  
15 Did you say 0321.04?  
16 MR. RUSS HERMAN:  
17 Yes.  
18 EXAMINATION BY MR. RUSS HERMAN:  
19 Q. Titled "Commercialized Nicotine Addiction: A  
20 Letter to the Editor," signed by Clark Heath, M.D.,  
21 Vice-President of Epidemiology at the American  
22 Cancer Society and Michael Thun, M.D., Director of  
23 Analytic Epidemiology.  
24 A. This is a letter done on environmental

25 tobacco smoke. It has nothing whatsoever to do with  
26 my testimony.  
27 Q. Sir, I'm only asking a question.  
28 You're familiar with that document; is that  
29 correct?  
30 A. I believe I've seen this, yes.  
31 Q. And they do criticize your methodology; is  
32 that correct?

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1 A. I'm not sure what you're referring to.  
2 Q. Well, you gave testimony previously about  
3 your work with the EPA; did you not?  
4 A. I have testified about that, yes.  
5 Q. Okay.  
6 A. But this has nothing to do with risk beliefs.  
7 Q. May I see that, please?  
8 A. Sure.  
9 Q. And the folder?  
10 I thought your testimony, when you were here  
11 last, was you had never had any of your methodology  
12 -- "I have never seen my methodology criticized by  
13 anyone."

MR. MUEHLBERGER:  
Repetitive.

16 A. I don't view this as a methodological  
17 criticism. Second, it has nothing to do with risk  
18 beliefs, which is what I testified about in this  
19 case. It has to do with environmental tobacco  
20 smoke.  
21 EXAMINATION BY MR. RUSS HERMAN:  
22 Q. Oh, I see.  
23 Okay. Well, let's go to something else.  
24 Were you criticized -- You know what Lancet is;  
25 correct?  
26 A. It's a British medical journal.  
27 Q. You were criticized in Lancet; were you not?  
28 A. There is a book reviewed by some doctor who  
29 didn't like my book, yes.  
30 Q. And you were criticized by the American  
31 Journal of Public Health; isn't that correct?  
32 A. Well, the American Journal of Public Health  
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1 doesn't write criticism. There is an article in the  
2 American Journal of Health -- Public Health that  
3 took a different perspective than I did. And I've  
4 since written an article that responds to that  
5 article.  
6 Q. That article written in the American Journal  
7 of Public Health did not agree with your methodology  
8 or conclusions; isn't that correct?  
9 A. If you could show me the article and show me  
10 what you're talking about.  
11 Q. I'll show you the testimony from the Falise  
12 trial. Do you remember testifying in Falise?  
13 A. I remember being in the Falise trial, yes.  
14 Q. And you were cross-examined at that time  
15 about the article in the American Journal of Public  
16 Health; do you recall that, sir?  
17 A. I don't recall every article they asked me

18 about, just like I don't remember everything you've  
19 asked me about.

20 MR. MUEHLBERGER:  
21 Page and line, please.

22 MR. RUSS HERMAN:  
23 It's Page 4472 -- 4466 in that  
24 transcript.

25 EXAMINATION BY MR. RUSS HERMAN:  
26 Q. I'm going to go on to another question.  
27 You've been criticized in methodology by Dr.  
28 Lowenstein, a psychologist/economist at Carnegie-  
29 Mellon; is that correct?

30 A. I'm not aware of him being critical of my  
31 work.

32 Q. You've been criticized in Contemporary  
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1 Sociology, May 1994, Volume 23, that's published by  
2 the American Society -- American Sociology  
3 Association; isn't that correct?

4 A. Not that I know of. I've never seen that,  
5 either.

6 Q. That's at Page 4473, I believe, of the Falise  
7 trial.

8 You've been criticized by Paul Slovic of the  
9 Annenberg School at the University of Pennsylvania,  
10 sir?

11 A. Yeah, Paul Slovic is not of the Annenberg  
12 School. But, yes, Paul and I disagree and I've  
13 written responses to him.

14 Q. And in the Journal of Behavioral Decision-  
15 Making in 1999?

16 A. Which also published my response to him in  
17 that same journal issue.

18 Q. And that journal, you are familiar with that  
19 journal?

20 A. I am.

21 Q. And in that article, it was said that  
22 "Viscusi's methods are deeply flawed"; do you recall  
23 that?

24 A. I think I said worse things about Mr. Slovic  
25 who's testified for plaintiffs. So this was a  
26 response to him.

27 Q. Sir, Mr. Slovic is not a witness in this  
28 case. I've never tried another tobacco case and  
29 neither have my friends.

30 MR. GAY:  
31 Objection, Your Honor.

32 EXAMINATION BY MR. RUSS HERMAN:  
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1 Q. I'm going to ask you about this case.  
2 Now, Exhibit 0343.04 in the Journal of  
3 Behavioral Decision-Making, 1999, quote,  
4 "Viscusi --"

5 MR. MUEHLBERGER:  
6 Objection. May we approach?  
7 THE COURT:  
8 You may approach.  
9 (Whereupon a bench conference is held at  
10 this time as follows:)

11 THE COURT:  
12 Mr. Muehlberger?  
13 MR. MUEHLBERGER:  
14 I object to Mr. Herman continuing to  
15 read from documents that are not in evidence.  
16 MR. WITTMANN:  
17 And, Your Honor, Mr. Herman knows when  
18 he's cross-examining a witness, like he is,  
19 he should show the witness what document he  
20 is referring to.  
21 THE COURT:  
22 You need to do all that. And if you're  
23 going to show it to him, you're going to have  
24 to give the document number and give them an  
25 opportunity to object if you're going to  
26 introduce it.  
27 MR. WITTMANN:  
28 Thank you.  
29 (Whereupon the bench conference is  
30 concluded at this time.)  
31 THE COURT:  
32 Objection sustained. Next question,  
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1 please.  
2 EXAMINATION BY MR. RUSS HERMAN:  
3 Q. If you would bear with me just one minute,  
4 Professor, I want to find that exhibit. It's  
5 Exhibit 0343.04.  
6 Oh, thank you very much. I appreciate it.  
7 This is "Commentary: The Perils of Viscusi's  
8 Analyses of Smoking Risk Perception" in the Journal  
9 of Behavioral Decision-Making.  
10 You are familiar with this article, sir?  
11 A. Yes.  
12 Q. And you responded to it; did you not?  
13 A. I did.  
14 MR. RUSS HERMAN:  
15 In connection with the testimony of the  
16 witness, I'm going to offer, file and  
17 introduce into evidence Exhibit 0343.04.  
18 THE COURT:  
19 Any objection?  
20 MR. MUEHLBERGER:  
21 No objection except, to my knowledge,  
22 it's not on the exhibit list.  
23 THE COURT:  
24 Is that an objection, Mr. Muehlberger?  
25 MR. MUEHLBERGER:  
26 Yes, Your Honor.  
27 THE COURT:  
28 Approach the bench, please.  
29 MR. RUSS HERMAN:  
30 Is that on the exhibit list? Regina, I  
31 need the exhibit list.  
32 (Whereupon a bench conference is held at  
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1 this time as follows:)  
2 THE COURT:  
3 The objection is that it does not appear

4 on the list?  
5 MR. RUSS HERMAN:  
6 To my knowledge, it was on the exhibit  
7 list. As a matter of fact, he was even  
8 questioned about it the last time we were  
9 here, number one.  
10 Number two, I furnished them this  
11 document in connection with his testimony  
12 when we were here last.  
13 MR. MUEHLBERGER:  
14 It's on a cross list. But, to my  
15 knowledge, I've never seen an exhibit list  
16 with this on it. So, for the record, I want  
17 to object to you using exhibits that you've  
18 got numbers on but are not on any filed  
19 exhibit list.  
20 MR. RUSS HERMAN:  
21 I furnished this to you three or four  
22 days -- well, a full eight or nine days ago,  
23 put it on an exhibit list, furnished you the  
24 document. And it is on an exhibit list which  
25 we filed.  
26 MR. MUEHLBERGER:  
27 We haven't seen it, to my knowledge,  
28 Russ. That's my point.  
29 THE COURT:  
30 Then we have to have a hearing on the  
31 exhibit list if you persist in your  
32 objection. He says it's on the list, you say  
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1 it's not. There's no way for me to decide  
2 that issue unless I hear a hearing on it.  
3 MR. RUSS HERMAN:  
4 It's an exhibit on this list  
5 (indicating).  
6 MR. MUEHLBERGER:  
7 That's a cross list. But it's not on  
8 the exhibit list filed in this case. That's  
9 my point.  
10 THE COURT:  
11 Well, then we have to have a hearing on  
12 it, if that's the case.  
13 MR. RUSS HERMAN:  
14 Okay.  
15 THE COURT:  
16 If that's your objection.  
17 MR. RUSS HERMAN:  
18 I'll reserve my right, and we'll move  
19 on, then we'll have the hearing. I want to  
20 get through with this witness.  
21 (Whereupon the bench conference is  
22 concluded at this time.)  
23 THE COURT:  
24 For the record, the objection is taken  
25 under advisement.  
26 Next question, please, Mr. Herman.  
27 EXAMINATION BY MR. RUSS HERMAN:  
28 Q. You also have been criticized by Dr. Cummings  
29 in an article "Smoke and Mirrors" published by the  
30 University of Chicago press?  
31 A. My book is published by the University of



32 Chicago press. I don't know that his book review  
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1 was ever published.  
2 Q. Have you seen that book review, sir?  
3 A. Yes, but it didn't have any publication  
4 information on it.  
5 Q. That's Exhibit 0342.04.  
6 In that article, that book review of your  
7 book, did Dr. Cummings indicate that you had  
8 difficulty telling fact from fiction?  
9 MR. WITTMANN:  
10 Objection, Your Honor. May we approach?  
11 THE COURT:  
12 Yes.  
13 (Whereupon a bench conference is held at  
14 this time as follows:)  
15 THE COURT:  
16 Mr. Wittmann.  
17 MR. WITTMANN:  
18 Your Honor, Mr. Herman continues to  
19 quote from exhibits not in evidence in  
20 framing the question, planting the seed in  
21 the jury's mind, whether the document ever  
22 comes in or not. He's laid no foundation for  
23 this document for this witness. It's  
24 hearsay, obviously.  
25 And I just think his framing of those  
26 questions is highly objectionable, Your  
27 Honor. He's drawn objection after objection  
28 over this this morning. And he knows how to  
29 ask a question and how to cross-examine  
30 properly. And I think it's just very  
31 improper questioning.  
32 MR. RUSS HERMAN:  
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1 Well, I think, Your Honor, if I might  
2 respond, it's very proper. You can ask a  
3 witness a question if he has read something,  
4 if he knows about it. He has said he knows  
5 about it. Then I can ask him, since he knows  
6 about it, does he recall this being said. If  
7 he doesn't recall, then I can come forward  
8 with the document. It is perfect cross-  
9 examination. If he says he does recall it, I  
10 just go on to something else.  
11 MR. MUEHLBERGER:  
12 May I follow up on that?  
13 He's seen it because we got this today,  
14 this morning from plaintiffs on their cross  
15 list. This, again, this is the only time  
16 he's seen it was this morning. This is not  
17 peer-reviewed, it's not published anywhere.  
18 For all I know, Dr. Cummings did this last  
19 week and sent it to Mr. Herman. It doesn't  
20 show that it's been published anywhere.  
21 And the same issue: This is not on any  
22 exhibit list we've ever seen, Russ.  
23 MR. RUSS HERMAN:  
24 It was placed on the exhibit list. I'll

25 reserve my right.  
26 (Whereupon the bench conference is  
27 concluded at this time.)  
28 THE COURT:  
29 The objection is under advisement. Next  
30 question, please.  
31 EXAMINATION BY MR. RUSS HERMAN:  
32 Q. Do you remember testifying in the Apostolou  
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1 trial on January 8th, 2000?  
2 A. Apostolou, yes.  
3 Q. Did you at Page 6421, 6423, 6424, indicate as  
4 follows?

5 MR. MUEHLBERGER:  
6 Objection, Your Honor. May we approach?  
7 THE COURT:  
8 Yes.

9 (Whereupon a bench conference is held at  
10 this time as follows:)

11 MR. WITTMANN:  
12 Your Honor, I'm sure that Mr. Herman is  
13 a skilled trial lawyer. He knows how to ask  
14 a question. You just don't take a deposition  
15 from another case or trial testimony and  
16 start reading from it.

17 MR. RUSS HERMAN:  
18 I didn't read from it.

19 MR. WITTMANN:  
20 You certainly --

21 MR. RUSS HERMAN:  
22 No, I didn't read from it.

23 MR. WILLIAMS:  
24 There is no statement for which this is  
25 inconsistent to.

26 MR. WITTMANN:  
27 You use a deposition to impeach. You've  
28 got nothing pending to impeach with.

29 THE COURT:  
30 He was stopped when he said did you not  
31 testify at this page, this page, that page as  
32 follows. And he was interrupted.

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1 MR. WITTMANN:  
2 Yes, because he's about to read from the  
3 deposition.

4 THE COURT:  
5 Well, you're not allowed to read. You  
6 can ask him if he said something. You know  
7 how to do impeachment.

8 MR. RUSS HERMAN:  
9 Sure.

10 THE COURT:  
11 Mr. Muehlberger also has an objection,  
12 Mr. Herman. I'll listen to that now.

13 MR. MUEHLBERGER:  
14 Just for the record, Your Honor, the  
15 proper way to impeach a witness is to ask him  
16 a question. If he denies it, then you  
17 impeach him with the same question from a

18 deposition transcript, not asking this  
19 witness whether he said this or that in some  
20 other transcript. That's completely improper  
21 use of -- improper impeachment and it's  
22 hearsay, reading from another deposition  
23 transcript.

24 THE COURT:

25 That's the way I ruled.

26 MR. MUEHLBERGER:

27 Thank you.

28 (Whereupon the bench conference is  
29 concluded at this time.)

30 THE COURT:

31 Next question, please, Mr. Herman.

32 EXAMINATION BY MR. RUSS HERMAN:

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1 Q. Did you ever say under oath on a prior  
2 occasion, "People who die early from smoking-related  
3 illnesses are saving the rest of us money"?

4 A. I don't know if I used those exact words.  
5 But I have said that, on balance, the premature  
6 death of smokers from a financial standpoint does  
7 not cost society money.

8 Q. You understand that this case, or part of  
9 this case, is about medical monitoring to determine  
10 whether people have smoking-related diseases at an  
11 early stage? Do you understand that, sir?

12 A. Yes.

13 Q. And do you understand that if those diseases  
14 are detected at an early age, they may have an  
15 improved quality of life or a longer life by  
16 intervention, sir?

17 A. That's a medical judgment. And I don't know  
18 the answer to that.

19 Q. Okay. Thank you.

20 Let's move on to the last issue I want to  
21 question you about. You destroyed, for whatever  
22 reason, documents on your 1991 survey?

23 A. I did not retain all the coding sheets after  
24 I moved, if that's what you mean.

25 Q. Yes, sir.

26 Did you throw it in the trash can? Did you  
27 put it through a shredder? What did you do?

28 A. Well, I had multiple garbage bins that I  
29 filled up, one a day, for about a month until I  
30 left. Because I was downsizing from about five  
31 offices to one.

32 Q. Are you familiar with documents that have  
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1 been admitted in evidence in this case in which  
2 certain tobacco company executives indicated that  
3 they would destroy information?

4 A. No.

5 Q. Or bury it?

6 A. No.

7 Q. Or set up dummy mailing addresses?

8 A. I haven't seen those documents.

9 Q. Or ship documents overseas?

10 A. As Paul Slovic did with his survey, yes. I

11 haven't seen those documents.  
12 Q. You weren't involved with Dr. Osdene, Dr.  
13 Levy, Dr. Dunn or Dr. Seligman, were you, in  
14 destroying the 1991 materials in connection with  
15 your survey; were you?  
16 MR. GAY:  
17 Objection, Your Honor. May we approach?  
18 THE COURT:  
19 Yes.  
20 (Whereupon a bench conference is held at  
21 this time as follows:)  
22 THE COURT:  
23 Mr. Gay?  
24 MR. GAY:  
25 Your Honor, Mr. Herman has absolutely no  
26 good-faith basis to make the statements he's  
27 making in the record. He knows the facts  
28 about these things. And he is just trying to  
29 create prejudice and passion in the jury, and  
30 it's improper. Unless he has a good-faith  
31 basis to make statements like this, it's  
32 inappropriate to do it.

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1 THE COURT:  
2 Well, this is a very sophisticated  
3 witness. And I think he can defend himself  
4 and answer the question. And that's what  
5 redirect might be for.  
6 The objection is overruled.  
7 (Whereupon the bench conference is  
8 concluded at this time.)  
9 THE COURT:  
10 The objection is overruled.  
11 Answer the question, Doctor, if you're  
12 able to. And if you'd like, I'll read it  
13 back to you.  
14 THE WITNESS:  
15 I can answer it, Your Honor.  
16 THE COURT:  
17 Answer the question, please.  
18 THE WITNESS:  
19 I don't know who any of those  
20 individuals are. And I did the same thing  
21 with my coding sheets that Gallup and other  
22 organizations do, which is after a period of  
23 time I toss them.  
24 EXAMINATION BY MR. RUSS HERMAN:  
25 Q. Have you ever heard the expression "The buyer  
26 needs a thousand eyes, the maker or seller needs but  
27 one"?  
28 A. No.  
29 Q. Have you ever heard that the person that  
30 makes or the company that makes a product is  
31 presumed to know everything about it but the  
32 consumer is not?

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1 A. No, because I think in many cases the company  
2 can never know everything about its product.  
3 Q. Well, do you think in this case, do you have

4 any knowledge that the tobacco companies as early as  
5 1965 did not know that there were 4,000 chemicals  
6 and compounds in tobacco smoke?  
7 A. I haven't seen any information on that at  
8 all.  
9 Q. Do you think that the cigarette companies  
10 involved in this case knew that they were putting  
11 urea and ammonia in their tobacco in order to boost  
12 the effect of nicotine?  
13 A. Once again, I haven't seen this analysis,  
14 either.  
15 Q. Do you think that the cigarette companies in  
16 this case knew for a hundred years that they could  
17 take nicotine out of tobacco?  
18 A. I'm not sure what they knew a hundred years  
19 ago.  
20 Q. I'll ask you this question again.  
21 Isn't it true that the maker of an object  
22 like a cigarette knows more about what it makes than  
23 the consumer that uses it?  
24 A. Well, that's a different question than  
25 before. But, usually, the maker knows more about it  
26 than the consumer.  
27 Q. And a question was asked: Who is responsible  
28 to tell the public about what the problem is in  
29 cigarettes? Isn't [sic] the cigarette companies  
30 have an obligation to tell the public about what the  
31 problems are in their cigarettes?

32 MR. WITTMANN:  
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1 Objection, Your Honor. May we approach?  
2 THE COURT:  
3 Yes.  
4 (Whereupon a bench conference is held at  
5 this time as follows:)  
6 THE COURT:  
7 Read your question.  
8 MR. RUSS HERMAN:  
9 It's a compound question. I'll withdraw  
10 it.  
11 MR. WITTMANN:  
12 Well, not only that --  
13 THE COURT:  
14 Mr. Muehlberger, you objected. Mr.  
15 Wittmann, you objected.  
16 MR. WITTMANN:  
17 Not only is it compound, it's preemption  
18 and it calls for a legal conclusion. It's  
19 three grounds.  
20 THE COURT:  
21 The objection to the form of the  
22 question is sustained. Next question,  
23 please.  
24 (Whereupon the bench conference is  
25 concluded at this time.)  
26 THE COURT:  
27 The objection to the form of the  
28 question is sustained. Don't answer the  
29 question, Doctor.  
30 Next question, please.  
31 EXAMINATION BY MR. RUSS HERMAN:

32 Q. Last question. Last two questions.  
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1 In giving your qualifications, didn't you  
2 mention and invoke the name of President John F.  
3 Kennedy?  
4 A. I mentioned I was an admirer of his, yes.  
5 Q. Do you agree with President Kennedy that a  
6 civilization is measured by how it treats its young,  
7 its old and its infirmed?  
8 A. I'd say those -- I don't disagree with that.  
9 That's a consideration.  
10 Q. And do you realize that this case is about  
11 youth smoking and addiction and about folks who are  
12 in their late fifties, sixties and seventies who may  
13 need medical monitoring?  
14 A. I know those age groups have come up in this  
15 case. I assume other ones have, too.  
16 MR. RUSS HERMAN:  
17 That's all I have. Thank you.  
18 THE COURT:  
19 Redirect questioning of this witness?  
20 MR. MUEHLBERGER:  
21 Yes, Your Honor. Thank you.  
22 THE COURT:  
23 Mr. Muehlberger?  
24 MR. RUSS HERMAN:  
25 I might just move my material and get  
26 out of counsel's way.  
27 Thank you very much for responding to my  
28 questions.  
29 THE WITNESS:  
30 Thank you, Mr. Herman.  
31 MR. MUEHLBERGER:  
32 Good afternoon, ladies and gentlemen of  
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1 the jury.  
2 THE JURY:  
3 Good afternoon.  
4 MR. MUEHLBERGER:  
5 Good afternoon, Professor Viscusi.  
6 THE WITNESS:  
7 Good afternoon, Mr. Muehlberger.  
8 REDIRECT EXAMINATION  
9 BY MR. MUEHLBERGER:  
10 Q. Now, Mr. Herman asked you about several  
11 company documents and polls that you had never seen  
12 before. Do you remember that?  
13 A. I do.  
14 Q. Now, what impact do all these company  
15 documents that you've never seen before have on your  
16 opinions that you gave here this morning?  
17 A. None whatsoever.  
18 Q. Why not?  
19 A. What I'm looking at is when the dust settles  
20 and we ask people what are their risk beliefs. So  
21 after they've taken into account everything that has  
22 been said or might have been said or letters they  
23 might have received, once all that is taken into  
24 account, do people perceive that smoking is

25 dangerous? And people are not only aware of that,  
26 but people actually overestimate the risk of  
27 smoking.  
28 Q. So your methodology assumes and takes into  
29 consideration everything the tobacco companies have  
30 ever told people on these issues, and yet your  
31 results are the same?  
32 A. That's correct. My methodology accounts for  
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1 any bad documents or anything else that may have  
2 transpired.  
3 Q. Now, I didn't hear a single question -- I may  
4 have missed it -- about actually the results of your  
5 opinions today. Did Mr. Herman ask you any  
6 questions challenging actually what you said this  
7 morning --  
8 A. None --  
9 Q. -- as far as your opinions?  
10 A. None that I could detect.  
11 Q. I couldn't, either.  
12 Now, on direct when we talked before the  
13 holiday break, you told this jury that some of the  
14 surveys were funded by law firms; right?  
15 A. Yes. Three of the surveys were funded by law  
16 firms.  
17 Q. Okay. There's no secret about that; right?  
18 A. That's correct.  
19 Q. And, in fact, because the first -- the 1985  
20 survey was funded by law firms, you went ahead and  
21 did your own survey without telling anybody to  
22 verify the accuracy of that survey; right?  
23 A. Right. Not only did I not tell them; they  
24 didn't give me any money for it or anything else.  
25 Q. And you've published these results. And  
26 anyone else can go out there and challenge the  
27 actual validity of these results, if they want to;  
28 right?  
29 A. That's correct.  
30 In fact, the University of Pennsylvania has  
31 rerun my survey questions regarding lung cancer risk  
32 beliefs and actually gotten stronger results than I  
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1 got.  
2 Q. Okay. Is it fair to say that the results of  
3 these surveys withstood the test of time, regardless  
4 of who ultimately might have paid for the first one?  
5 A. That's right. I published these in peer-  
6 reviewed journals about fifteen years ago. And I'm  
7 still, you know, publishing peer-reviewed  
8 publications based on this work.  
9 Q. Now, the fact that some other plaintiffs'  
10 experts who are testifying for plaintiffs in other  
11 tobacco cases have criticized your work, does that  
12 mean your work isn't reliable?  
13 A. No. I mean, people disagree a lot in  
14 academia. If you wrote something that everybody  
15 agreed with, it probably wouldn't be that  
16 interesting.  
17 And it's the weight of the evidence. And

18 over time, if your views are discredited, you lose  
19 credibility. And I value my credibility highly  
20 since that's my stock in trade. I wouldn't have the  
21 job I have if I wasn't credible.

22 Q. Okay. Mr. Herman also asked you about what  
23 judges have said about your work. And I want the  
24 record to be clear. Has any judge ever excluded you  
25 from testifying in any case?

26 A. No, I've never been excluded on any topic.

27 Q. Okay. In fact, you've taught hundreds of  
28 state and federal judges the very same issues that  
29 you testified about this morning; is that correct?

30 A. That's correct. I've taught hundreds of  
31 federal judges and hundreds of state judges about  
32 hazard warnings and risk beliefs and how people form  
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1 their risk beliefs.

2 Q. Okay. Now, there were also some questions  
3 about research you've done on the issue of smoking.  
4 Has any attorney affiliated with any tobacco company  
5 or any tobacco company employee at any time ever  
6 paid you to do any of the research you've done on  
7 risk perception?

8 A. I've never received a penny from the tobacco  
9 industry or law firms representing them for any of  
10 my research relating to smoking, tobacco or related  
11 topics.

12 Q. Okay. The same question with respect to  
13 hazard warnings?

14 A. That's true.

15 Q. The same question with respect to your work  
16 on the economic effects of addiction?

17 A. That's true, they have not funded my research  
18 on any topic.

19 Q. So neither the tobacco industry nor any  
20 lawyers ever represented by it have ever funded a  
21 single one of your articles or books; is that right?

22 A. That's correct.

23 Q. Okay. And have other top scholars in your  
24 field reviewed your research on the topics you  
25 testified to this morning in front of the ladies and  
26 gentlemen of the jury?

27 A. Yes. In fact, everything I talked about this  
28 morning has been peer-reviewed by the top economic  
29 journals and the top university presses in the world  
30 before I talked about it today.

31 Q. Okay. Mr. Herman also asked you some  
32 questions about whether, in fact, we had actually  
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1 introduced into evidence the sources for some of the  
2 demonstratives utilized for the ladies and gentlemen  
3 of the jury.

4 A. That's correct.

5 Q. Okay. So let's just do that now. Let's just  
6 put them all into evidence.

7 MR. RUSS HERMAN:

8 We don't object. Just read them off.

9 MR. MUEHLBERGER:

10 We move into evidence for the record



11 SA-2553; 2539; AG-000190; SA-2541; AN-000592;  
12 AIW-000533, Gallup Poll; AIW-000229, Gallup  
13 Poll; SA-2783, Gallup Poll questions;  
14 SA-3933, Gallup Poll questions.

15 THE COURT:

16 No objections?

17 MR. RUSS HERMAN:

18 No objections, Your Honor.

19 THE COURT:

20 They will be received in evidence.

21 EXAMINATION BY MR. MUEHLBERGER:

22 Q. Now, plaintiffs' counsel also spent some time  
23 talking to you about youth risk perception. Do you  
24 remember those questions?

25 A. Yes, I do.

26 Q. Okay. Have you examined how youths perceive  
27 the risks of smoking compared to older people?

28 A. Yes. Not only have I written articles about  
29 this, but --

30 MR. RUSS HERMAN:

31 Objection. May I approach, Your Honor?

32 (Whereupon a bench conference is held at  
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1 this time as follows:)

2 THE COURT:

3 Your objection, Mr. Herman?

4 MR. RUSS HERMAN:

5 None of the articles he's testifying  
6 about are in evidence nor are they on his  
7 reliance list. This is beyond the scope of  
8 his reliance documents.

9 THE COURT:

10 Well, but it's redirect on your cross.  
11 And you went into this; didn't you?

12 MR. RUSS HERMAN:

13 I certainly did, but I didn't -- he is  
14 now talking about things that he is relying  
15 on that go beyond what I crossed him on.  
16 Your Honor, I've been held throughout this  
17 trial in redirect in not going beyond the  
18 scope of --

19 THE COURT:

20 Well, my point is -- The scope of cross,  
21 I understand that. But you questioned him  
22 about his surveys and the age groups at  
23 which --

24 MR. RUSS HERMAN:

25 That's correct.

26 THE COURT:

27 And I think this is an appropriate  
28 follow-up to that.

29 MR. RUSS HERMAN:

30 Okay.

31 THE COURT:

32 So your objection is overruled.

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1 MR. MUEHLBERGER:

2 Thank you, Your Honor.

3 (Whereupon the bench conference is

4 concluded at this time.)  
5 THE COURT:  
6 The objection is overruled.  
7 Answer the question. Do you remember  
8 the question?  
9 THE WITNESS:  
10 Yes, I do, Your Honor.  
11 THE COURT:  
12 Answer the question, please.  
13 THE WITNESS:  
14 Not only have I written articles about  
15 youth smoking but I have chapters in each of  
16 my two smoking books about youth smoking and  
17 I've studied research of other scholars on  
18 youth smoking as well.  
19 EXAMINATION BY MR. MUEHLBERGER:  
20 Q. Have any of your surveys compared how youths  
21 perceive the risk of smoking versus how adults  
22 perceive those risks?  
23 A. Yes. In fact, one of the surveys that I just  
24 discussed this morning did that.  
25 Q. What other data have you considered on the  
26 issue of youth smoking and youth risk perception?  
27 A. There's also a study that's been done on  
28 optimism bias for youths. And it's been done by the  
29 same psychologist, Paul Slovic, that was mentioned  
30 by Mr. Herman. And he found that youths do not  
31 exhibit optimism bias with respect to smoking. They  
32 rate the risk to themselves actually as a bit higher  
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1 than they rate the risk to others. It was published  
2 in the Journal of Adolescence.  
3 Q. So young people think the risks of smoking  
4 are more dangerous than older people feel about  
5 that?  
6 A. They think they're more dangerous than older  
7 people and they also perceive risks to themselves.  
8 Q. Does that surprise you?  
9 A. No, because young people have been growing up  
10 in a very strong antismoking environment so that  
11 you'd expect them to have really high risk  
12 perceptions.  
13 Q. Are you aware of any survey data showing that  
14 youth smoking -- that youth, young people, consider  
15 smoking to be less dangerous than older people?  
16 A. No, I've never seen such data.  
17 MR. MUEHLBERGER:  
18 Thank you very much, Professor.  
19 Thank you, ladies and gentlemen.  
20 THE COURT:  
21 Step down.  
22 Next witness for the defense, please.  
23 MR. LONG:  
24 May we approach the bench, Your Honor?  
25 MR. WITTMANN:  
26 May we approach, Your Honor?  
27 (Whereupon a bench conference is held at  
28 this time as follows:)  
29 THE COURT:  
30 Mr. Long?  
31 MR. LONG:

My understanding -- and I just checked  
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1 -- we don't have any depositions ready to  
2 read. They're still being worked on after  
3 the hearings. And we have not anticipated  
4 putting Professor Norrell on until tomorrow.

5 THE COURT:

6 So we're out of witnesses or testimony?

7 MR. LONG:

8 Yes. That's where I think we are, yes.

9 THE COURT:

10 Then all we can do is recess.

11 MR. LONG:

12 Okay.

13 THE COURT:

14 And your plan is for this --

15 MR. LONG:

16 Tomorrow morning.

17 THE COURT:

18 All right. I'm going to dismiss the  
19 jury. I have no alternative.

20 MR. BENCOMO:

21 Okay. Judge, could we have an idea as  
22 to -- I realize it's not their witness, Mr.  
23 Sholes' witness, but I think we have Norrell  
24 tomorrow, and then I think we have just one  
25 deposition.

26 MR. LONG:

27 Scheffman is being burned, I think, and  
28 that's a pretty long deposition. We've got  
29 two others that we're going to read from:  
30 Tamol and Gori that I think we've sent to you  
31 to look at. Those are just read-ins.

32 THE COURT:

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1 We can deal with that after I dismiss  
2 the jury.

3 MR. LONG:

4 Okay.

5 MR. BENCOMO:

6 Okay. Thank you.

7 (Whereupon the bench conference is  
8 concluded at this time.)

9 THE COURT:

10 Well, we've run into a little problem.

11 There's no testimony available being  
12 presented to you at this point. And it will  
13 be tomorrow morning at 9:30 before we have  
14 another witness. So your day is over at this  
15 point. We'll see you tomorrow. 9:30. 9:30.  
16 9:30, everyone. See you then. Thank you.  
17 You're discharged for today.

18 (Whereupon the jury is excused at this  
19 time.)

20 THE COURT:

21 Let the record reflect the jury has been  
22 discharged for the day.

23 Anything for the record by plaintiffs'  
24 counsel?

25 MR. RUSS HERMAN:  
26 No, Your Honor.  
27 We'll reserve our right with respect to  
28 the two exhibits that counsel says were not  
29 on the exhibit list for some later time.  
30 If we could -- As I understand it, they  
31 have -- we've been told they have one more  
32 live witness this week and one deposition.

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1 And it's a short week as it is. We've been  
2 told that they have two live witnesses next  
3 week. At this rate, I mean, we're going to  
4 have a problem later on. That's my only  
5 comment.

6 THE COURT:  
7 Anything else by plaintiffs' counsel?  
8 Defense counsel, anything for the  
9 record?

10 MR. WITTMANN:  
11 No, Your Honor.

12 THE COURT:  
13 It's my understanding you intend to  
14 present Robert J. Norrell as a witness  
15 tomorrow morning?

16 MR. WITTMANN:  
17 Yes, Your Honor.

18 THE COURT:  
19 And, Mr. Muehlberger, I want you to make  
20 sure that the numbers of those last exhibits  
21 that you introduced, that I have the correct  
22 numbers. So if you'll give them to my law  
23 clerk so that I can make sure that I have the  
24 correct numbers.

25 On the Norrell demonstratives --

26 MR. RUSS HERMAN:  
27 Yes, Your Honor?

28 THE COURT:  
29 On the Norrell demonstratives, any  
30 objections that I need to talk about?

31 MR. MURRAY:  
32 Your Honor, we had objections to, I

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1 think, three. I'm not sure they were all  
2 demonstratives. It's my understanding that  
3 there's an issue on the defendants' side as  
4 to whether they're going to use those. But  
5 if they do, they agree to reserve my right to  
6 object if they do use them.

7 THE COURT:  
8 Well, we'll deal with that in the  
9 morning then.

10 MR. MURRAY:  
11 Okay. Let me ask you this. Were there  
12 any additional delivered?

13 MR. COPLEY:  
14 No. Everything you got was Monday.

15 MR. MURRAY:  
16 Okay. Thank you.

17 THE COURT:

18 All right. And I have a letter by FAX  
19 from Mr. Copley of a possible deposition  
20 scheduling.  
21 Have you checked with the Middleberg law  
22 firm to find out if they are ready to do  
23 those?  
24 MR. COPLEY:  
25 I have not checked with them yet, but I  
26 will.  
27 THE COURT:  
28 Well, I haven't had a chance to do that  
29 since I got the letter, so there's no point  
30 in discussing that scheduling unless they're  
31 able to accommodate us. So we'll deal with  
32 that at a later time, also.

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1 Anything else before we recess?  
2 We'll recess until 9:30 tomorrow  
3 morning.  
4 MR. MURRAY:  
5 Thank you, Your Honor.  
6 (Whereupon the proceedings were  
7 adjourned at 2:22 o'clock p.m.)  
8 \* \* \* \* \*

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9 hereby certify that this testimony was reported by  
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14 understanding; that I am not related to counsel or  
15 to the parties herein, nor am I otherwise interested  
16 in the outcome of this matter.  
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